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9 DUNSTONE FINANCIAL, LLC

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WILLIE F. TICZON, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

DUNSTONE FIANANCIAL, LLC; DOES 1
THROUGH 10,

Case No.: CV 081312 SBA

**DEFENDANT DUNSTONE FINANCIAL
LLC'S ANSWER TO CLASS ACTION
COMPLAINT FOR DAMAGES**

Defendant DUNSTONE FINANCIAL, LLC (hereinafter "Defendant") hereby responds to Plaintiff's Class Action Complaint as follows:

1. As to Paragraph 1, Defendant denies these allegations.
2. As to Paragraph 2, Defendant denies this allegation.
3. As to Paragraph 3, Defendant denies this allegation.
4. As to Paragraph 4, Defendant does not possess sufficient information to admit or deny these allegations, and, on that basis, denies these allegations.
5. As to Paragraph 5, Defendant admits this allegation.
6. As to Paragraph 6, Defendant admits this allegation.
7. As to Paragraph 7, Defendant does not possess sufficient information to admit or deny this allegation, and, on that basis, denies this allegation.

1 8. As to Paragraph 8, Defendant lacks sufficient information to admit or deny this
2 allegation, and, on that basis, denies this allegation.

3 9. As to Paragraph 9, Defendant admits that Plaintiff obtained a consumer credit card on
4 or about May 12, 1999 but denies that Providian Financial Corporation was the card issuer. Defendant
5 admits the remaining allegations.

6 10. As to Paragraph 10, Defendant lacks sufficient information to admit or deny any
7 allegations, and, on that basis, denies this allegation.

8 11. As to Paragraph 11, Defendant lacks sufficient information to admit or deny any
9 allegations, and, on that basis, denies this allegation.

10 12. As to Paragraph 12, Defendant admits this allegation.

11 13. As to Paragraph 13, Defendant lacks sufficient information to admit or deny any
12 allegations, and, on that basis, denies this allegation.

13 14. As to Paragraph 14, Defendant admits this allegation.

14 15. As to Paragraph 15, Defendant admits that it acquired the account on February 19,
15 2004.

16 16. As to Paragraph 16, Defendant denies these allegations.

17 17. As to Paragraph 17, Defendant denies these allegations.

18 18. As to Paragraph 18, Defendant admits this allegation.

19 19. As to Paragraph 19, Defendant denies this allegation.

20 20. As to Paragraph 20, Defendant denies this allegation.

21 21. As to Paragraph 21, Defendant denies this allegation.

22 22. As to Paragraph 22, Defendant denies this allegation.

23 23. As to Paragraph 23, Defendant denies this allegation.

24 24. As to Paragraph 24, Defendant denies this allegation.

25 25. As to Paragraph 25, this paragraph does not contain factual allegations that need be
26 admitted or denied and on this basis defendant denies this allegation.

27 26. As to Paragraph 26, Defendant denies these allegations.

28 27. As to Paragraph 27, Defendant denies these allegations.

1 28. As to Paragraph 28, Defendant denies these allegations.

2 29. As to Paragraph 29, Defendant denies these allegations.

3 30. As to Paragraph 30, Defendant denies these allegations.

4 31. As to Paragraph 31, Defendant denies this allegation.

5 32. As to Paragraph 32, Defendant denies this allegation.

6 33. As to Plaintiff's prayer for relief, Defendant denies that Plaintiff has been damaged in
7 any amount and denies that Plaintiff is entitled to the relief requested.

8 Pursuant to Federal Rule of Civil Procedure 8(c), Defendant sets forth the following matters
9 constituting an avoidance or affirmative defense:

10 **FIRST AFFIRMATIVE DEFENSE**

11 34. Defendant alleges that this Court lacks subject matter jurisdiction over this Complaint,
12 as the allegations in this Federal Court Complaint are based upon the same set of operative facts
13 alleged in the underlying State Court Complaint, and, as such, these allegations should form the basis
14 of a compulsory Cross-Complaint in the State Court action..

15 **SECOND AFFIRMATIVE DEFENSE**

16 35. Defendant alleges that the Complaint, and each cause of action contained therein, fails
17 to state facts sufficient to constitute a cause of action.

18 **THIRD AFFIRMATIVE DEFENSE**

19 36. Defendant is informed and believes and thereon alleges that the Complaint, and each
20 cause of action therein, is barred by the applicable statute of limitations, including but not limited to,
21 15 U.S.C. § 1692k(d) (FDCPA).

22 **FOURTH AFFIRMATIVE DEFENSE**

23 37. Defendant alleges that Plaintiff himself was negligent, careless, and/or committed
24 intentional acts, in and about the matters alleged in the Complaint, and said negligence, carelessness
25 and/or intentional acts caused and/or contributed to her injuries and/or damages.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 38. Defendant alleges that other persons and parties were careless and/or negligent, and/or
28 committed intentional acts, and that this carelessness, negligence, or these intentional acts proximately

1 contributed to the happening of the incidents referred to in the Complaint, and to the extent said
2 negligence, carelessness and/or intentional acts caused and/or contributed to injuries and/or damages,
3 then the damages alleged against this Defendant should be reduced or eliminated.

4 **SIXTH AFFIRMATIVE DEFENSE**

5 39. Defendant alleges that Plaintiff failed and neglected to use reasonable care to protect
6 himself and to minimize and/or mitigate the losses and/or damages asserted in the Complaint.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 40. Defendant alleges that all of its actions were taken in good faith and with a reasonable
9 belief that such actions were legal, appropriate and necessary.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 41. Defendant alleges that the representations or statements alleged to have been made by
12 Defendant was true, accurate at the time made, and/or otherwise were made in good faith and with a
13 reasonable belief as to their truth, validity and accuracy.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 42. Defendant alleges that the Complaint, and each cause of action contained therein, is
16 barred by the equitable Doctrine of Laches.

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 43. Defendant alleges that the Complaint, and each cause of action contained therein, is
19 barred by the equitable Doctrine of Unclean Hands.

20 **NINTH AFFIRMATIVE DEFENSE**

21 44. Defendant alleges that the Complaint, and each cause of action contained therein, is
22 barred by the equitable Doctrine of Waiver and Plaintiff is also estopped from maintaining this action.

23 **TENTH AFFIRMATIVE DEFENSE**

24 45. Defendant alleges that Defendant's conduct was privileged pursuant to California Civil
25 Code Section 47 and/or common law privileges under state and federal law, and as a result, the
26 Complaint, and each cause of action thereof, is barred.

27 **ELEVENTH AFFIRMATIVE DEFENSE**

28 46. Plaintiff's claim is subject to the defense of set-off and defendant is entitled to set-off

1 any recovery by Plaintiff by the amount of any outstanding debts.

2 **TWELFTH AFFIRMATIVE DEFENSE**

3 47. Defendant alleges that statutory and common law immunities apply to the acts and/or
4 omissions complained of in the Complaint on file herein.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 48. Defendant alleges that all of its actions were taken in good faith without intent to injure
7 plaintiff and with a reasonable belief that such actions were lawful.

8 **FOURTEENTH AFFIRMATIVE DEFENSE**

9 49. Defendant is informed and believes and thereon alleges that it has no civil liability
10 pursuant to 15 U.S.C. § 1692k(c), as any violation was unintentional and resulted despite the
11 maintenance of procedures reasonably adopted to avoid any such violation.

12 **FIFTEENTH AFFIRMATIVE DEFENSE**

13 50. Defendant alleges that any actions taken by it that were raised in Plaintiff's Complaint,
14 and the causes of actions therein, were fair, not unconscionable, and effected by non-deceptive and
15 lawful means.

16 **SIXTEENTH AFFIRMATIVE DEFENSE**

17 51. Defendant alleges that Plaintiff's Complaint (and the causes of action alleged therein) is
18 barred because Plaintiff failed to comply with the dispute mechanism set forth by the Fair Debt
19 Collection Practices Act, pursuant to Bleich v. Revenue Maximization Group, Inc., 233 F.Supp.2d 496
20 (E.D. N.Y. 2002).

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 52. Defendant alleges that Plaintiff's Complaint (and the causes of action alleged therein) is
23 barred because Defendant's actions were taken in reasonable reliance upon information provided by its
24 clients pursuant to Ducrest v. Alco Collections, Inc. (M.D. La. 1999) 931 F.Supp. 459, 462, and Hulse
25 v. Ocwin (D. Or. 2002) 195 F.Supp.2d 1188, 1210.

26 **EIGHTEENTH AFFIRMATIVE DEFENSE**

27 53. Defendant alleges that it acted lawfully and intended to take any and all action
28 contemplated, whether expressly allowed by contract or permitted by law, as represented to Plaintiff.

1 NINETEENTH AFFIRMATIVE DEFENSE

2 54. Defendants allege that any acts of these Defendants were performed in good faith in
3 conformity with advisory opinions of the Federal Trade Commission pursuant to 15 U.S.C. § 1692k(e).

4 TWENTIETH AFFIRMATIVE DEFENSE

5 55. Defendant alleges that Plaintiff's Complaint and the causes of action alleged therein, is
6 barred by the Knorr-Pennington doctrine.

7 TWENTY FIRST AFFIRMATIVE DEFENSE

8 56. Defendants hereby allege the following affirmative defenses, including, but not limited
9 to, those set forth in **Federal Rule of Civil Procedure 8(c)**, so as not to waive them at this time:
10 assumption of risk, contributory negligence, duress, failure of consideration, fraud, illegality, license,
11 failure to join an indispensable party, and abatement.

12 TWENTY SECOND AFFIRMATIVE DEFENSE

13 57. Defendant alleges that Plaintiff's Complaint is barred by fraud or other equitable
14 conduct on the part of the Plaintiff.

15 TWENTY THIRD AFFIRMATIVE DEFENSE

16 58. Defendant alleges that Plaintiff's claims are not actionable pursuant to 15 U.S.C.
17 §1681s-2(a).

18 TWENTY FOURTH AFFIRMATIVE DEFENSE

19 59. Defendant alleges that Plaintiff's claims are not actionable pursuant to 15 U.S.C.
20 §1681t(b)(1)(F).

21 TWENTY FIFTH AFFIRMATIVE DEFENSE

22 60. Defendant presently has insufficient knowledge or information on which to form a
23 belief as to whether Defendant may have additional, as yet unstated, defenses available. Defendant
24 reserves herein the right to assert additional defenses in the event discovery indicates that they would
25 be appropriate.

26 WHEREFORE, Defendant prays as follows:

- 27 1. That Plaintiff take nothing from this answering Defendant by this Complaint;
28 2. That Defendant be awarded judgment in this action;

3. For costs of suit incurred herein; and

4. For reasonable attorney's fees pursuant to statute including, but not limited to, 15

U.S.C. § 1692k(a)(3), and

5. For such other and further relief as the Court deems proper.

Dated: March 31, 2008

Ellis, Coleman, Poirier, LaVoie, & Steinheimer LLP

By

Jeffrey J. Whitelaw
Attorney for Defendant
DUNSTONE FINANCIAL, LLC

1 DEMAND FOR JURY TRIAL

2 Defendant DUNSTONE FINANCIAL, LLC hereby demands a jury trial in this
3 matter.

4
5 Dated: March 31, 2008

6 Ellis, Coleman, Poirier, LaVoie, & Steinheimer LLP

7 By 

8 Jeffrey J. Whitelaw
9 Attorney for Defendant
DUNSTONE FINANCIAL, LLC

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CERTIFICATE OF SERVICE

I, Carol Kenobbie, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 555 University Avenue, Suite 200 East, Sacramento, CA 95825.

On March 31, 2008, I served the following document(s) on the parties in the within action:

**DEFENDANT DUNSTONE FINANCIAL LLC'S ANSWER TO CLASS ACTION
COMPLAINT FOR DAMAGES**

XX	VIA ELECTRONIC SERVICE: The above-described document(s) will be delivered electronically through the Court's ECF/PACER electronic filing system, as stipulated by all parties to constitute personal service, to the following:
	BY MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at Sacramento, CA on this date, addressed as follows:
	BY HAND: The above-described document(s) will be placed in a sealed envelope which will be hand-delivered on this same date by _____, addressed as follows:
	VIA FACSIMILE: The above-described document(s) was transmitted via facsimile from the fax number shown on the attached facsimile report, at the time shown on the attached facsimile report, and the attached facsimile report reported no error in transmission and was properly issued from the transmitting facsimile machine, and a copy of same was mailed, on this same date to the following:
	VIA OVERNIGHT SERVICE: The above-described document(s) will be delivered by overnight service, to the following:

Irving L. Berg
The Berg Law Group
145 Town Center, #493
Corte Madera, CA 94925

Attorneys for
Plaintiff Willie F. Ticzon

I declare under penalty of perjury under the laws of the State of California that the foregoing is a true and correct statement and that this Certificate was executed on March 31, 2008.

By Carol Kenobbie
Carol Kenobbie